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**Understanding Variety in Public
Agencies**

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All errors and omissions remain those of the author.

1. Introduction

This paper is part of a larger project which seeks to create a database of public bodies, their establishment, mutations and deaths, in Ireland from the foundation of the state in 1922. In order to do this it is necessary to have some analytical frame for distinguishing public bodies from other organisations, so as to include the former and exclude the latter. Within the group to be included it is necessary to provide some differentiation between different types of public bodies so that researchers using the database can readily identify the different roles and obligations associated, for example with being a division of a ministerial government department, as compared with being a publicly owned limited company. Such differentiation also allows users of the database to discover changes in the overall makeup of state bodies, their operational modes and accountability structures and to test hypotheses concerning the fragmentation or centralization of state functions and proliferation of agencies.

A starting point in this paper is the analysis of the ownership of agencies and, relatedly, their legal form. An analysis is also offered of the functions of agencies, divided between their generic functions and their policy domain. Thus function refers to distinctions between operational modes – regulation, transfers of funds, policy making, etc – whilst domain refers to the policy area – health, education, etc. Whilst it is important to know about the form and function of public agencies, there are important additional dimensions to their public status. Three further indices of ‘publicness’ are analysed in the paper – funding, authority and accountability. Most public agencies derive their resources from public funds voted by the Oireachtas each year. Some organisations which would generally be considered to be non-governmental organisations and for whom there is no direct delegation of public power nevertheless derive a substantial part of their funding from public sources. Educational bodies are a key example. There are, conversely, a number of agencies which are publicly owned and exercise public authority which are substantially resourced from private funds. Regulatory agencies provide the key examples here.

The identification of form, functions, domains and funding does not tell us how public agencies secure and exercise their power, and the following section considers the various bases for governmental action, including a consideration of variety in authority, extending beyond state bodies. The analysis allows that some bodies, otherwise private in terms of form and ownership nevertheless exercise public power.

The final area for analysis in the paper is the accountability matrix applying to public agencies. The extent of accountability obligations applying to public agencies comprises a continuum in which some bodies are subject to all forms of public accountability. These mechanisms include accountability to the Oireachtas, courts, audit, ombudsman, and so on. Other agencies with significant public elements are subjected only to a more limited range of accountability

mechanisms. A central concern in contemporary debates about public administration is how well the mechanisms of accountability have adapted to a perceived fragmentation in the exercise of public power away from the traditional focus on ministers and ministerial government departments.

Thus this paper deploys a broad conception of public agency to target and problematise all bodies which have one or more of the following properties: public ownership, public funding, exercise of statutory powers, subjection to public accountability mechanisms. At one end of a continuum of publicness in agencies are ministries, established and governed by legislation, whilst at the other are a variety of non-governmental organisations which, variously, are substantially funded from the public purse, exercise statutory powers and/or are subjected to public accountability mechanisms.

Overall the identification of a core group of public agencies might be relatively straightforward on any of the indices adopted in this paper. However the multiple analyses offered highlight the existence of an important penumbral area and offers some explanation for the lack of confidence in attempts to count the numbers of public agencies in Ireland, and a methodology for developing a range of more definitive lists using a variety of criteria.

2. Public Agencies, Ownership and Organisational Form

In this paper I deliberately adopt the term 'public agency' to target and to problematize organisations to be included within the database. No single classification of public agencies is in usage either nationally or internationally.¹ Agencies are, by definition, the agents of some principal. One understanding sees government ministers or departments as principals delegating tasks to agencies within their departments, or to organisations constituted separately under legislation or by administrative circular. Within the international literature a distinction is sometimes drawn between executive agencies, broadly within the

¹ In Ireland a three way classification is used for official purposes by reference to ownership, appointment or funding : 'An Irish public sector organisation is defined as any employing body which: (a) directly derives the majority of its share capital from Irish public funds, or (b) has the majority of its Board/Executive members appointed by an Irish Minister, or (c) directly derives the majority of its revenue from Irish public sources. The Irish public sector comprises the following administrative sub-sectors: the Oireachtas (or National Parliament) and the Judiciary, the Civil Service, the Garda Síochána (or National Police Force), the Defence Forces, the Local Authorities, the Health Services, education, the Harbour Authorities and the State-Sponsored Bodies ... Private sector employing organisations are defined as the residuum' (Humphreys and Gorman, 1987:8). (Subsequently adopted by the Central Statistics Office, source McGauran et al *The Corporate Governance of Agencies in Ireland* (2005: 31).

control of ministers, though possibly legally separate, and statutory agencies which operate at arms-length from ministers (Thynne 2004). I suggest in this paper that it is helpful, from an analytical perspective, to think of ministerial departments as agencies too (Hood and Dunsire 1981), whether of the Oireachtas or of the people.

A particular difficulty with the analysis is that the statutory or public corporation form (referred to for consistency as statutory corporations) is used in Ireland for a very wide array of different types of bodies including regulatory, advisory and trading organisations, thus this set is rather undifferentiated and thus lacking analytical purchase. There are additionally some bodies established under legislation which do not explicitly have corporate form- I refer to these as statutory non-departmental bodies and a range of bodies established without legislation, the precise legal character of which is difficult to determine with confidence.

The three way distinction between ministerial departments, executive and statutory agencies does not exhaust the set of public agencies (Thynne 2004: 92). First there is a group of state agencies charged with overseeing government which, while it would be odd to think of them as agencies of government, are nevertheless performing public oversight functions. Amongst these bodies are the Office of the Ombudsman and the Comptroller and Auditor General, both of which might be classified as agents of the Oireachtas. Not all such bodies overseeing government are agencies of the Oireachtas, nor are they all established by the written constitution, so I propose to adopt a broader classification of 'constitutional and statutory officeholders' (Thynne 2004) which would include the judiciary, regulators of public service employment and human rights. A further distinct class of agencies adopts the form of companies of various kinds. Some commercial, but state-owned entities, are established as statutory corporations in a manner broadly similar to that of statutory agencies generally. Others adopt the form of private companies – public (ie listed) limited companies, private limited (ie unlisted) companies and companies limited by guarantee. The terms semi-state or state-sponsored companies are sometimes used to refer to at least some of these entities, although it is not clear that this term makes their status any clearer.

Most organisations identified as government departments and agencies are likely to be wholly owned by government on a statutory basis. But, ownership does not get us much further than this as the question is tied in with legal form. Legal form varies between departments, boards and statutory corporations through to various forms of Companies Acts companies (public companies, private companies, companies limited by guarantee) to associations (rooted in contract).

The question of legal form is also linked to origins. The basis for the creation of public bodies includes statute (primary or delegated), an administrative circular, incorporation (statutory, chartered, companies acts) or association. So, for

example though the Medical Council is an example of a professional self-regulatory body exercising statutory powers and funded privately from payments by registered doctors, its legal status is as a statutory corporation established under the Medical Practitioners Act 1978.

The question of ownership, origins and legal form ties in directly into issues concerning the legitimacy of organisations, and in particular the right to appoint, set and control budgets, and lines of accountability, whether political, legal or financial. It is possible for legislation to assign to a minister the right to appoint directors of a company which appears, in all other respects, to be a private company. The establishment of or conversion of statutory corporations to listed companies, of course, facilitates privatization, making it possible for ministers to dispose of shares in order to divest themselves of control without the requirement of legislation. There have been many such privatizations in recent years, for example ACC Bank plc, ICC Bank plc and Aer Lingus plc.

A summary of the various legal forms for public agencies in Ireland, showing examples within each category is at table 1 (cf (Hogan and Morgan 1998: 134 ff).

Legal Form		Examples (Year Established)
Ministry established under Ministers and Secretaries Act 1924 or subsequent order or act under this or amending legislation - may include executive agencies which remain legally part of the ministry		Department of Justice, Equality and Law Reform (1924 – with subsequent amendments to remit and title) Irish Prison Service (1998)
Corporations	Statutory – specific or enabling legislation	Electricity Supply Board (1927) RTE (1960, as Radio Éireann) Córas Iompair Éireann (1944 as limited company, converted to statutory corporation 1950) VHI Healthcare (1957) Telefís na Gaeilge (2007, previously a subsidiary of RTE) Equality Authority (1999) Health Service Executive (2004) Pharmaceutical Society of Ireland (1875, 2007)
	Chartered	Trinity College Dublin (1592) Royal College of Surgeons Ireland (1784)
	Company Limited by Guarantee	The Discovery Programme Ltd (1991) National Concert Hall Limited (1981) Horse Sport Ireland Ltd (2007) National Theatre Society Ltd (Abbey Theatre) (established 1903, Nationalised, 1925) Irish Universities Quality Board (2006)
	Public Company (listed) with majority government shareholding and/or golden share	Eirgrid plc (2006) Aer Lingus Group plc (1936) (but majority shareholding sold, 2006) Bord Na Móna plc (1946)
	Unlisted (private) Company	An Post (1983) Advertising Standards Authority for Ireland (1981)
Statutory non-departmental public bodies (NDPBs) not established as corporate bodies		Higher Education Authority (1968) Broadcasting Complaints Commission (1977)
Non-Statutory Non-Departmental Public Bodies (with separate legal personality?)		Taskforce on Active Citizenship (2006) National Competitiveness Council (1997)
Constitutional Bodies	Constitutional and Statutory Office Holders	Office of the Ombudsman (1984) Information Commissioner (1998) Comptroller and Auditor General (1922) Judiciary (1922) Tribunals – Statutory – eg Employment Appeals Tribunal (1977) Tribunals - Non-Statutory – eg Criminal Injuries Compensation Tribunal (1971)
	Statutory Corporations	Irish Human Rights Commission (2001) Courts Service (1998)

Table 1: Legal Form of Public Agencies in Ireland

3. Functions

Functions fulfilled by public bodies are not necessarily unique to public bodies and thus a functional analysis, though it might be helpful in distinguishing different types of public bodies, is not helpful in distinguishing public bodies from others. A list of generic functions has been elaborated from the well known list offered by Dunleavy in which he describes five core functional types of state agency: delivery, regulatory, transfer, contract and control and adds also taxing, trading and service agencies (Dunleavy 1989). I have removed the category of service agencies – these are organisations delivering services to other public bodies (for example Local Government Computer Services Board) and I have included them under delivery. As noted in the introduction my conception of public agencies includes multi-function ministerial departments, so I have added this to the list. Working from the list of public agencies in Ireland it was difficult to incorporate some into this extended group of nine and where the issue could not be resolved I created a further category. In some cases I did not think any of Dunleavy’s categories apt to capture the chief function of the agency. This includes the adjudication and grievance-handling agencies, the investigatory agencies, advisory/consultative bodies, representative/advocacy bodies, research and information providing bodies. In one instance, developmental agencies, it might have been possible to include these under other headings (for example trading, delivery) but the creation of an additional function adds something to the analysis which will follow.

Generic Function	Irish Examples (Date of Creation)
Adjudication/Grievance Handling	Censorship of Films Appeals Board (1923) The Labour Court (1946) Broadcasting Complaints Commission (1977) Office of the Ombudsman (1984) Censorship of Publications Appeals Board (1946) Criminal Injuries Compensation Tribunal (1971) Employment Appeals Tribunal (1977) An Bord Pleanála (1977) Rent Tribunal (1979) Residential Institutions Redress Board (2002)

	<p>Ombudsman Children (2002)</p> <p>Pensions Ombudsman (2003)</p> <p>Personal Injuries Assessment Board (2004)</p> <p>Ombudsman for the Defence Forces (2004)</p> <p>Garda Síochána Ombudsman (2007)</p>
Advisory/Consultative/ Representation/Advocacy	<p>Placenames Commission (1946)</p> <p>Advisory Council for English Language Schools (1969)</p> <p>Law Reform Commission (1971)</p> <p>Forfás (1994)</p> <p>Dublin Transportation Office (1996)</p> <p>Irish Human Rights Commission (2000)</p> <p>National Children's Advisory Council (2001)</p> <p>Irish Human Rights Commission (2001)</p> <p>Advisory Council for Science, Technology and Innovation(2005)</p> <p>Business Regulation Forum(2005)</p> <p>National Haemophilia Council (?)</p>
Contracting	<p>National Roads Authority (1994)</p> <p>The Railway Procurement Authority (2001)</p>
Delivery	<p>Trinity College Dublin (1594)</p> <p>The Turf Club (1790)</p> <p>University College Dublin (1854)</p> <p>National Gallery of Ireland (1854)</p> <p>National Museum of Ireland(?)</p> <p>National Library of Ireland (1877)</p> <p>Abbey Theatre (1903)</p> <p>Central Bank of Ireland (1943)</p> <p>Irish National Stud Co Ltd (1946)</p> <p>Chester Beatty Library (1950)</p> <p>Arts Council (1951)</p> <p>Voluntary Health Insurance Board (1957)</p> <p>Irish Greyhound Board (1958)</p> <p>RTE (1960)</p> <p>The Local Government Computer Services Board (1971)</p> <p>An Post (1984)</p> <p>Culture Ireland (2005)</p>
Developmental (commercial and non-commercial)	<p>Agricultural Credit Corporation (1927) (now ACC Bank – sold by state to Rabobank in 2002)</p> <p>Industrial Credit Corporation (1933) (later ICC Bank – sold by state 2001, now part of Bank of Scotland (Ireland))</p> <p>Industrial Development Authority (1949) (Renamed IDA Ireland 1994)</p> <p>Shannon Development (1959)</p> <p>National Building Agency Ltd (1960)</p> <p>Horse Racing Ireland (2001)</p>

Information-Providing	Road Safety Authority (2006)
Investigatory	Criminal Assets Bureau (1996) The Tribunal of Inquiry into Certain Planning Matters and Payments (1997)
Ministries – General Purpose – Policy Formation and Execution	Department of the President of the Executive Council (1924) Department of Finance (1924) Department of Justice (1924) Department of Local Government and Public Health (1924) Department of Education (1924) Department of Lands and Agriculture (1924) Department of Industry and Commerce (1924) Department of Fisheries (1924) Department of Posts and Telegraphs (1924) Department of Defence (1924) Department of External Affairs (1924)
Regulatory (over public and private sectors)	Pharmaceutical Society of Ireland (1875) An Garda Síochána (1922) Film Censors Office (1923) Office of the Comptroller and Auditor General (1923) Commissioner of Charitable Donations and Bequests (1923) Veterinary Council (1931) Central Bank of Ireland (1943) and Irish Financial Services Regulatory Authority (added 2003) Equality Authority (1989) Standards in Public Office Commission (2001) Health Insurance Authority (2001) Racing Regulatory Body (2001) Private Security Authority (2004) Commission for Public Service Appointments (2004) Irish Universities Quality Board ((2002)2006) Garda Síochána Inspectorate Health Information and Quality Authority (2007)
Research/ Information-Gathering	State Laboratory (1924) Medical Research Council (1937) Dublin Institute for Advanced Studies (1940)

	Central Statistics Office (1949) Forensic Science Laboratory (1975)
Taxing	Office of the Revenue Commissioners (1923)
Trading	Electricity Supply Board (1927) Aer Lingus (1936) Irish Life Assurance Company (1939) (privatized 1991)
Transfer	Higher Education Authority (1968) Housing Finance Agency (1978)

Table 2 Functional Differentiation of Public Bodies in Ireland – Key Examples

Some analyses explicitly exclude some of the identified functions from the analysis of public bodies. For example the recent TASC study, which identified 482 central public bodies, excluded regulators of public and private sector, working groups and tribunals (both investigatory and adjudicatory) (Clancy and Murphy 2006).

A more concrete conception of function is advocated in the UN Classification of the Functions of Government (<http://unstats.un.org/unsd/cr/family2.asp?Cl=4>), widely adopted as the international standard classification. The classification is oriented around policy domains rather than function. COFOG consists of the following primary categories:

- Agriculture, fisheries and forestry
- Communications
- Defence
- Education and Training
- Employment
- Enterprise and Economic Development
- Environmental Protection
- General Public Services
- Health
- Housing and Community Amenities
- International Services
- Public Order and Safety
- Recreation, culture, Religion
- Social Protection
- Transport

For research seeking to create a useable database of public bodies these classifications are valuable in providing an exhaustive set of policy domains which users of the database can use to limit their research. Accordingly within the mapping project we will adopt separate fields for function and domain, enabling users of the database to precisely identify the number all the bodies engaging, for example, in regulation, in a particular domain, for example environmental protection.

4. Funding

This analysis of form and function of public agencies provides a starting point for the analysis in this paper, but only gets us so far. For example, it does not definitively distinguish the public from the private, since many privately owned companies are included within it. Thus, an analysis of organisational form needs to be supplemented with consideration of ownership. We then meet the problem that at least some functions we think of as being public functions are exercised by organisations which are not publicly owned. This is because functions may be contracted out or delegated under legislation or delegated implicitly because they are tolerated, stimulated and/or financed by governmental bodies. Even if we decide to exclude such organisations from our mapping project, we should be aware of their role in fulfilling public functions.

The source of an organisation's funds is a further potential index of its status, and one with some significance for accountability (see discussion below). Some apparently publicly owned organisations are nevertheless privately funded through levies and fees. This is often true of regulatory organisations, though it is common for levies to be paid to a finance ministry and organisational funds be allocated from the finance ministry, rather than levies flow directly to the organisation. The Commission for Communications Regulation, which is a statutory corporation, receives more than 95 per cent of its income from levies and licensing fees from regulated bodies. It might also be true of self-financing trading organisations, as with some statutory corporations, such as the Electricity Supply Board. Some organisations not owned by the state nevertheless receive all or most of their funds from the state. Schools provide a key example in Ireland as do a number of other educational bodies such as the National Adult Literacy Agency. Whereas we might think of the core public sector as comprising the publicly owned and publicly financed bodies, and the core private sector as comprising privately owned and privately financed, it is clearly that there is a substantial penumbra private on one indicator and public on the other (Table 3).

Ownership	Public	Private
Financing		
Public	Ministries Core Public Sector	Schools
Private	Regulatory Bodies Trading Organisations	Core Private Sector

Table 3 Funding Relationship to Core Public and Private Sector

A recent UK study of the regulation of public sector actors used a combined approach based on ownership and funding to distinguish different degrees of publicness along a continuum (Hood et al. 1999: 22). Thus government departments, publicly owned and funded are core public sector. Statutory trading corporations, publicly owned, but largely funded from non-state sources, are examples of mixed public/private sector. Privately funded companies are core private sector. Publicly funded non-state actors such as some charities and not-for-profit organisations are mixed public/private economy.

For some purposes the identification of this substantial mixed middle ground is unsatisfactory. The treatment of organisations by the legal system for the purposes of judicial review, for example, can deal only with a binary classification within which a decision is made by a public body (amenable to judicial review) or not. Similarly the application of public audit principles, though variable across jurisdictions, is typically tied to a binary distinction between bodies which are publicly funded and those which are not. These accountability issues are discussed below.

5. Forms of Authority

Ownership and legal basis shape, but may not be determinative of, the possession of legal authority. Some forms of legal authority are possessed equally by private as public bodies, notably that which derives from contract. Thus private companies are as capable as government ministries of using contracts to control behaviour of their suppliers (McCrudden 2004). Some bodies which, in ownership terms, are private, have public law authority delegated to them by statute. The Law Society of Ireland perhaps provide the key example of a private organisation to which are delegated statutory powers for the regulation of the solicitors' profession under the Solicitors Acts. There appears to be a more limited delegation of statutory powers to private bodies in Ireland than would be true for the UK. Thus, enforcement of animal cruelty legislation, assigned to the private RSPCA in the UK, is a function of the gardai in Ireland. In the case of standardisation, the National Standards Authority of Ireland is a public corporation, established by statute, whereas its UK counterpart, the British Standards Institute (BSI) is a private body which receives limited public funds. The Irish Turf Club and the Irish National Hunt and Steeplechase Committee have statutory power to exclude persons from racecourses under the Racing Board and Racecourses Act 1945, but this is a pretty limited example. It is arguable that private schools have extensive delegation of public authority to them in respect of education.

One area of implicit delegation is to the Advertising Standards Authority of Ireland, which takes on responsibility for regulation of much of the advertising sector including press and broadcasting. The delegation is implicit in the sense that this is an area where we might expect statutory regulation (and have it for broadcasting, in parallel with self-regulation) if self-regulation were not there or

not effective. In contrast with its UK counterpart, the ASAI claims its jurisdiction from the contract entered into by its members. (The UK regime extends beyond its membership). This factor makes it likely that the ASAI would be considered a private body by the courts (discussed further below).

In addition to the bodies assuming authority from legislation and contract there is a further class of public agencies. Certain non-statutory bodies have been established by government circulars and exercise powers, for example, to make payments, without any further legal authority.

Source of Authority	Type of Public Body
Legislation	Ministries Statutory Corporations Non-state bodies exercising delegated power – eg Law Society of Ireland, An Taisce
Contract	Self-Regulatory Bodies - eg ASAI Public bodies exercising ordinary contractual power – eg procurement contracts
Administrative Circular	Non-Statutory Non-Departmental Body – eg Criminal Injuries Compensation Tribunal

Table 4 Sources of Authority of Public Agencies

The nature and sources of authority for public agencies affects the accountability matrices in which they are located, as discussed in the next section.

6. Accountability

It is conventional to conceive of public agencies as occupying a position in a matrix of accountability involving, centrally, the Oireachtas, the courts and various constitutional agencies such as the Ombudsman, the Comptroller and Auditor General and the Information Commissioner. Whilst many public agencies are subject to each of these regimes, for others that coverage is partial. The conception of when an agency is public for the purposes of any particular accountability regime is, in practice, highly varied.

In the case of the Oireachtas parliamentary accountability is modelled on the assumption the ministers are accountable for all the activities within their broad portfolio and the doctrine of collective responsibility ensures a link between all aspects of the public administration and the Oireachtas. However the creation of statutory executive agencies, at arms-length from ministers undermines this

assumption and has brought forward new mechanisms for linking agencies to the Oireachtas. In the case of the Health Service Executive, for example, parliamentary questions are addressed not to the Minister for Health, but rather to the Parliamentary Affairs Division of the HSE. Additionally, the obvious fact that chief executives of agencies are not members of the Oireachtas has increased the importance of appearances by such agency heads before select committees, mainly in their capacity as accounting officers.

The main mechanism of judicial accountability of public agencies is the action for judicial review in the High Court. Once considered by English authors to be 'sporadic and peripheral' (Smith 1980), the remarkable increase in judicial review actions requires a reassessment of that analysis. An empirical project on the impact of judicial review in Ireland, of the kind already undertaken in the three main UK jurisdictions, is urgently required.

Considering the broad spectrum of public agencies, it is significant that the Irish courts have noted but generally distinguished the English Court of Appeal decision in *City Panel on Takeovers ex p. Datafin* ([1987] QB 815) in declining to hold a variety of privately owned bodies amenable to judicial review. The Irish courts, apparently departing from *Datafin*, have emphasised the need for statutory or common law public power as underpinning the decision to be challenged by way of judicial review. Where a decision maker gets their power from contract or agreement the decision is not amenable to judicial review (eg *Quinn v Honourable Society of King's Inns* (2004] IEHC 220, Unreported)). There is a modest departure from this principle in *Eogan v UCD* ([1996] 2 I.L.R.M. 302) and *Becker v Duggan* ([2005] IEHC 376) where the powers of the decision maker were 'not directly based on statute, [but] depended on approval by the legislature or the Government for their continued exercise'.

Beyond parliamentary and judicial accountability are the regimes associated with the variety of constitutional agencies, established over the past 85 years. The oldest of these is the Comptroller and Auditor General, provided for under Article 33 of the Constitution, but continuing the work of the old Exchequer and Audit Department which pre-dated independence. The constitutional scope of the C&AG's responsibilities is the audit of all monies authorised or controlled by the Oireachtas. The scope of such audits has been extended beyond the traditional concern checking that money is spent as authorised to the more modern value for money audit in respect of selected public functions. Agencies where are in some sense public but not dependent on monies authorised or controlled by the Oireachtas fall outside the C&AG's jurisdiction.

Under the Freedom of Information Act 1997 an organisation is a public body within the terms of the Act if it is listed in Schedule 1. Whilst that Schedule operates chiefly by way of a list, Schedule 1 (5) gives considerable discretion to ministers to exclude or include certain bodies from the scope of the Act. Thus a company wholly or partly owned or financed wholly or partly from public finances

can be included within the scope of the legislation as can any other organisation partly or wholly funded from public funds. Additionally the requirements of the Act can be applied to any body which 'functions in relation to the general public or a class of the general public stand conferred by any enactment'. This could cover the Law Society of Ireland and other private bodies exercising statutory powers. The European Convention on Human Rights Act 2003 works not with a list (subject to addition or exclusion) but rather the general definition that its provisions apply to 'every organ of the state'.

"organ of the State" includes a tribunal or any other body (other than the President or the Oireachtas or either House of the Oireachtas or a Committee of either such House or a Joint Committee of both such Houses or a court) which is established by law or through which any of the legislative, executive or judicial powers of the State are exercised;' (s.1(1)).

The Ombudsman has had cause to complain about the limited scope of her jurisdiction, which is centred on government departments, local authorities and certain key service providers, notably An Post and the Health Service Executive. The presence of An Post in the list is curious since, as a trading organisation, some would think it much less within the core public sector than many other organisations, such as the Garda Siochana. And if An Post is within the jurisdiction then why not the ESB and Bord Gais? The borders between public bodies and the rest for Ombudsman purposes may be contingent on particular policy choices, for example an historic commitment to protecting the Garda from Ombudsman scrutiny, in favour of establishing investigative tribunals in the most serious cases of alleged wrongdoing. This policy has seen a change with the establishment of the Garda Ombudsman in 2007.

The penumbral area of constitutional agencies includes both NGOs and supranational organisations which hold public bodies to account over their actions. Many NGOs implicitly take on oversight functions over government. An Taisce (established 1948), which has some delegated public functions, for example, describes as being amongst its core functions the role of 'impartial monitor on the application of EU environmental legislation at local level' (<http://www.antaisce.org/campaigns/an-taisce>, visited 9 October 2007). Treaty obligations taken on by the Irish government create supranational oversight, for example in respect of implementation of EU legislation and expenditure of EU funds, not only by the European Commission, but also the European Court of Auditors. Similarly, in the human rights domain, Treaty Obligations create a monitoring role for the European Committee for the Prevention of Torture.

7. Conclusions

The essence of what is public and private is difficult to pin down. Few would deny that ministries and many statutory non-departmental public bodies are public in character because their existence and activities are largely, if not exclusively,

carried out within their statutory mandate using public funds. If statutory authority alone were the basis of 'publicness' then no distinction would be made between these obviously public bodies on the one hand and a range of non-state actors which exercise public functions under delegated legislation. It might be argued that the Law Society of Ireland is not like a ministry because it does things which are not within the mandate created by legislation. But, is it not equally true of ministries, statutory corporations and non-departmental public bodies that they do at least some things not fully anticipated in legislation?

It is of the essence of a statutory corporation with trading functions that it can act commercially, within the boundaries of its legislative authority. This idea is captured in Ireland by the use of the term "semi-state bodies". Is this a misnomer (Barrington 1980: 57)? Such bodies are established under statute, but, when successful will typically receive much or all of their current funding from transactions (the position for capital funding may be different). These bodies are subject to public sector accounting rules and other public sector financial constraints.

Regulatory bodies are established and act under legislative authority but some, like many statutory corporations, collect their funding from private sources. Some would say that levies and licence fees are simply taxes, levied under statutory authority and that such bodies should be regarded as core public sector.

Perhaps the most difficult case is presented by bodies with no statutory mandate, no public ownership and no public funds, for which the Advertising Standards Authority of Ireland and the new Office of Press Ombudsman and Press Council of Ireland are key examples. The legal authority of such bodies to act, such as it is, must derive from contractual arrangements between members. Such arrangements appear no different from a the purchasing contract of a large company which imposes various requirements on a supplier, and which may include compliance with certain third party codes or standards and mechanisms for monitoring and enforcement. If there is a difference, it may that which has been identified by the English Court of Appeal when it said of the activities of the UK Takeover Panel that if it were not there to perform its functions then government would need to establish a statutory body to fulfil them, and the Panel was, therefore amenable to judicial review. But such an argument is rather artificial. There are many functions that *might* call forth a legislative response if the disappeared or did not exist, but such responses depend on timing, resources, and perhaps media influence. Such counterfactual exercises are therefore a shaky basis for defining 'publicness', and have not found much favour in Ireland.

The paper does not, then, offer a definitive list of public agencies in Ireland. Rather it lays bare the variety of considerations to be made in determining the parameters of public agencies. Beyond this classificatory dimension, the exercise

is revealing of some significant trends in the establishment and functioning of public agencies.

One important set of claims concerning public agencies concerns their fragmentation during recent periods of public management reform. For any particular state arguments about fragmentation beg the question first, what was the starting point, in terms of organisational forms for public management, and how have these been re-cast? Such an analysis provides the basis for challenging the fragmentation hypothesis where fragmented public management reforms are found that pre-date the convulsions dated from the 1970s. Within the Westminster-type systems it is sometimes assumed that the starting point is the highly centralized model of government (multi-purpose, central government departments and multi-purpose local authorities) which characterised public management in the UK between the wars. In Ireland the Free State Constitution of 1922 provided for the creation of an Executive Council (cabinet) to comprise between five and seven ministers appointed by the Representative of the Crown and with a maximum of 12 ministers in total, each to head a department. Greater specificity on the establishment of departments was provided by the Ministers and Secretaries Act 1924 .

However it has been suggested that in states with greater developmental requirements than the UK more fragmented models were adopted in the late nineteenth and early twentieth centuries. Key examples are found in Canada and Australia (Wettenhall 2003: 222-3). Though the initial ambition was to consolidate the various inherited boards and corporations within ministerial control of the Free State Government in Ireland it is apparent that the perceived demands of the developmental state caused significant fragmentation within a few years, with large numbers of new public bodies springing up from 1927. Consequently the ambitions of the 1924 Act, to locate all responsibility for public functions with ministers, were rapidly undermined (Hogan and Morgan 1998: 112).

The proliferation of regulatory agencies in more recent times has already been much commented on (including adverse comments by a number of ministers). At least as striking is the rise of the adjudicatory agency in Ireland, a phenomenon which requires further exploration. The analysis of these trends create a further challenging agenda for public administration research in Ireland, beyond the completion of a comprehensive database of central public agencies.

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